



2006 - 127

STATE OF ALABAMA
OFFICE OF THE ATTORNEY GENERAL

August 11, 2006

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Education, Boards of – Schools – Students –
Health Care - Nurses

To comply with the Alabama Board of Nursing Standards of Nursing Practice, a board of education has the authority to adopt reasonable rules and regulations that place students at schools other than a school in the students' attendance district to provide the students with the necessary nursing services to accommodate their health-care needs. The board of education retains the authority to transfer a student who requires nursing services to a school with a full-time nurse over the parent's or guardian's objection to the transfer.

Dear Mr. Seale:

This opinion of the Attorney General is issued in response to your request on behalf of the Montgomery County Board of Education.

QUESTIONS

(1) Is the Montgomery County Board of Education ("Board") required to serve all students with health-care needs at their zoned schools, or can the Board require the students to transfer to a school with a full-time nurse?

(2) If a parent or guardian refuses to allow their child, who has health-care needs and requires a full-time nurse, to transfer to a school with a full-time nurse, can the Board compel the student to transfer to such a school?

FACTS AND ANALYSIS

Your request states as follows:

The Alabama Board of Nursing Standards of Nursing Practice states as follows:

(2) Registered nurses or licensed practical nurses who provide nursing care in the school setting through the twelfth grade may delegate specific tasks to unlicensed assistive personnel.

...

(4) The specific delegated tasks shall not require the exercise of independent nursing judgment or intervention. Specific tasks that require independent nursing judgment or intervention that shall not be delegated, include, but are not limited to:

- (a) Catheterization, clean or sterile;
- (b) Administration of injectable medications, other than premeasured medication for allergic reactions;
- (c) Administration of rectal or vaginal medications;
- (d) Calculation of medication dosages other than measuring a prescribed amount of liquid medication or breaking a scored tablet;
- (e) Tracheotomy care, including suctioning;
- (f) Gastric tube insertion, replacement or feedings;
- (g) Invasive procedures or techniques;
- (h) Sterile procedures;
- (i) Ventilator care; and

(j) Receipt of verbal or telephone orders from a licensed prescriber.

ALA. ADMIN. CODE r. 610-X-6-.06 (2004).

Your request provides the following information. Nurses working in schools in the Montgomery County school system follow the Alabama Board of Nursing Standards of Nursing Practice in providing medical care to the students in the school system. Many students in the Montgomery County school system have health-care needs. The nursing staff of the school system develops a health-care plan or an emergency care plan for each student in the district requiring health-care services. The health-care plan contains information regarding the diagnosis, guidelines, procedures to be performed at school, and care to be provided to the student. The emergency care plan provides information regarding the proper healthcare procedures to be followed in the event of an emergency with the student. These plans are developed utilizing information from the parent or guardian of the student, the student's healthcare provider, and the appropriate school staff. If the student qualifies for section 504 services (services under section 504 of the federal Rehabilitation Act of 1973), a section 504 plan is also provided.

Some of the students in the school system have acute health-care needs requiring assessment by a licensed nurse. Other students have doctors' orders that require a specific task that cannot be delegated to anyone in the school system except a registered nurse or licensed practical nurse pursuant to the Alabama Board of Nursing Standards of Nursing Practice. For example, some diabetic students have doctors' orders for administration of a glucagon injection during the school day should this be necessary. These doctors' orders provide that a glucagon injection be administered to a student if specific symptoms are present and include procedures for administering the glucagon injection. Therefore, applying the Alabama Board of Nursing Standards of Nursing Practice, a glucagon injection would be an administration of injectable medication that is a specific task that cannot be delegated to anyone in the school system except a registered nurse or licensed practical nurse. See ALA ADMIN. CODE r. 610-X-6-.06 (2004).

The Montgomery County school system is not staffed with nurses at every school in the district. Rather, the nurses are dispersed throughout the school system at various schools to accommodate all students' health-care needs. If a student is zoned to attend a school without a full-time nurse and has acute health-care needs or has a doctor's order for a nondelegable task that requires a nurse to be on the school premises at all times, that student is assigned to attend a school within close proximity to his or her zoned school that has a full-time nurse. During the 2005-2006 school year, several parents of students with health-care needs requiring a full-time nurse at the school refused to allow those students to attend the school to which they have been assigned where their health-care needs can be met. Rather, these parents are keeping their children in their zoned schools, even though the school is not staffed with a nurse. This decision by the parents raises potential liability concerns for the Board.

Pursuant to section 16-8-34 of the Code of Alabama, county boards of education have the authority to divide the county into convenient school attendance districts. ALA. CODE § 16-8-34 (2001). The issue in this request is whether students can be required by the board of education to attend a school outside of the students' attendance districts to receive the nursing services to accommodate the students' health-care needs. The request also indicates that, if the students qualify for services under section 504 of the Rehabilitation Act of 1973 ("section 504"), a section 504 plan is provided for those students. Accordingly, the students the district is attempting to transfer to schools with full-time nurses may be students who have disabilities and receive section 504 services or students who have only health-care plans and are not covered by section 504.

Although the Alabama Board of Nursing Standards of Nursing Practice are state regulations, state law does not specifically address whether boards of education that employ nurses can comply with these regulations by assigning students to schools outside of the students' attendance districts. State law provides that the administration and supervision of school systems is the responsibility of county and city boards of education. ALA. CODE § 16-8-8 (2001); *Hargett v. Franklin County Bd. of Educ.*, 374 So. 2d 1352 (Ala. 1979).

Courts have long held that local boards of education may prescribe reasonable methods by which boards may raise funds, employ, supervise, consolidate, build, insure, *transfer school children*, and transport them in providing and operating a uniform and effective system of public schools throughout the counties of the state. *Vincent v. County Bd. of Educ.*, 222 Ala. 216, 131 So. 893 (1931); *Bd. of Educ. v. State ex rel. Kuchins*, 222 Ala. 70, 131 So. 239 (1930); *Kennedy v. County Bd. of Educ.*, 214 Ala. 349, 107 So. 907 (1926); *Bryant v. Whisenant*, 167 Ala. 325, 52 So. 525 (1910). In addition to supervision and administration, local boards shall seek, in every way, to promote the interest of the schools under its jurisdiction. ALA. CODE § 16-8-9 (2001).

Under the broad authority granted to school boards to designate school districts, provide for the transfer of school children, and to administer and supervise the schools, it is the opinion of this Office that, under state law, a school board may adopt reasonable rules and regulations assigning students to schools outside of the students' attendance districts if necessary to accommodate the health-care needs of the students and to comply with the Alabama Board of Nursing Standards of Nursing Practice.

Although this Office does not issue opinions with respect to federal law, we can look to federal law for additional guidance. The following information is therefore offered with respect to those students who receive section 504 services.

Students are entitled to a free appropriate public education under section 504. Section 504 defines a "free appropriate public education" as "the provision of regular or special education and related aids and services that . . . are designed to meet the individual educational needs of handicapped persons as adequately as the

needs of nonhandicapped persons. . . ” 34 C.F.R. § 104.33 (2000). Although section 504 does not define “related aids and services,” the term is used interchangeably with “related services” under the Individuals with Disabilities Education Act, as amended by the Individuals with Disabilities Education Improvement Act of 2004 (“IDEA”).

IDEA was enacted to “ensure that all children with disabilities have available to them a free appropriate public education that emphasizes special education and related services designed to meet their unique needs. . . .” Individuals with Disabilities Education Improvement Act of 2004, Pub. L. 108-446, § 601(d)(1)(A), 20 U.S.C. § 1400(d)(1)(A) (Supp. 2005). Included in related services are “school nurse services designed to enable a child with a disability to receive a free appropriate public education.” Individuals with Disabilities Education Improvement Act of 2004, Pub. L. 108-446, § 602(26)(A), 20 U.S.C. § 1401(26)(A) (Supp. 2005).

In a letter addressed to Ms. Anne Lambert, the Office for Civil Rights addressed whether, in following the regulations of the Alabama Board of Nursing, a school district could cluster low-incidence populations of students (i.e., students requiring injections, tracheotomy care, gastronomy tube feeding and medication by rectal route) in one or two schools so a nurse did not have to be employed in every school in a school system. The Office for Civil Rights determined that school districts are not required to offer services at all schools in the district. Rather, provided school districts comply with the requirements of section 504 and ensure comparable facilities to students with and without disabilities, school districts were not prohibited from “clustering students with certain types of disabilities in selected school(s).” Letter from Suong Mai Cavalli, Chief Civil Rights Attorney, Office for Civil Rights, United States Department of Education to Ms. Anne Lambert, Director of Special Services, Monroe County School System, dated May 31, 2002.

The issue of whether students with medical needs are entitled to attend their neighborhood schools has also been examined under IDEA by the courts. For example, in *Kevin G. v. Cranston School Comm.*, 130 F.3d 481 (1st Cir. 1997), the court held that a school district had an obligation to provide school placement, which included a full- time nurse. The school district, however, was not required to change the district’s placement of nurses when care was readily available at another easily accessible school. *See also, White v. Ascension Parish Sch. Bd.*, 343 F.3d 373 (5th Cir. 2003) (finding that, for the provision of related services under IDEA, no appellate court has recognized a right to a neighborhood school assignment).

The Office-for-Civil-Rights analysis does not differentiate between students who receive nursing services under section 504 and students who may have a disability or medical condition who are not covered by section 504. Rather, the *Lambert* letter states that a school district is not prohibited from clustering students with disabilities, so long as the school district complies with section 504. Accordingly, if students with disabilities under section 504 and IDEA can be placed at schools outside of their attendance districts to provide them with nursing services, then students who have a medical condition or disabilities not covered by

Honorable James R. Seale

Page 6

section 504 and IDEA can also be compelled to attend schools with full-time nurses so that the district can comply with the relevant nursing regulations.

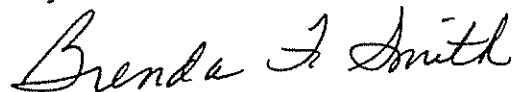
CONCLUSION

To comply with the Alabama Board of Nursing Standards of Nursing Practice, a board of education has the authority to adopt reasonable rules and regulations that place students at schools other than a school in the students' attendance district to provide the students with the necessary nursing services to accommodate their health-care needs. The board of education retains the authority to transfer a student who requires nursing services to a school with a full-time nurse over the parent's or guardian's objection to the transfer.

I hope this opinion answers your questions. If this Office can be of further assistance, please contact Larry Craven, Legal Division, Department of Education.

Sincerely,

TROY KING
Attorney General
By:

A handwritten signature in cursive script, reading "Brenda F. Smith".

BRENDA F. SMITH
Chief, Opinions Division

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